

**MINUTES OF ORDER
OF THE SECOND PROCEDURAL MEETING HELD
AT THE WORLD BANK, WASHINGTON DC
ON THURSDAY, 7th SEPTEMBER 2000**

The Second Procedural Meeting was held in Room MC13-121 at the World Bank, 1818 H Street, N.W. Washington DC 20433, USA on Thursday, 7th September 2000, beginning at 0930 hours.

It was attended by the three members of the Tribunal (J. William Rowley QC, Warren Christopher; and V.V. Veeder QC) and the spokespersons for the two Disputing Parties: Mr J. Brian Casey of Baker & McKenzie for the Claimant and Mr Barton Legum of the US State Department's NAFTA Arbitration Division for the Respondent, together with other representatives of the Disputing Parties.

These persons included for the Claimant Janet E. Mills (Baker & McKenzie), W. James Emmerton, (Methanex) and Tom Roberts (VanNess Feldman); and for the Respondent, Ronald J. Bettauer, Mark A. Clodfelter, Clifton M Johnson, Alan Birnbaum, Andrea Menaker, Andrea Bjorklund, Laura Svat, Jennifer L. Toole (US State Department), Ethan Shenkman, Kenneth L. Dorashow (US Department of Justice), Steve Fabry (Office of the United States Representative), Aret Anronoff, Kathryn Nickerson (US Department of the Treasury) and Deborah Barnes (California Environmental Protection Agency).

In addition, Mrs Nancy Fischer of Shaw Pittman attended on behalf of Mexico, as authorised by letter dated 6th September 2000 to the Tribunal from Hugo Perezcano Diaz of the Government of Mexico.

Item 1

The draft minutes of the First Procedural Meeting were finalised with the parties; and subsequently the minutes were signed by the chairman and released to the parties, by letter dated 2nd October 2000.

Item 2

After hearing the parties and having considered their respective submissions (both oral and written) the Tribunal selected Washington DC as the seat, or legal place, of the arbitration, for reasons more fully set out in a separate decision.

Item 3

The Tribunal and the Disputing Parties took note of the written applications to intervene as "amici curiae" from the International Institute for Sustainable Development of Winnipeg (Manitoba, Canada) and the Communities for a Better Environment, The Earth Island Institute & the Center for International Environmental Law of San Francisco (California, USA). None of these institutions were present at the meeting.

Having heard the parties, the Tribunal decided not to decide upon these applications at the meeting but to set a procedural timetable for further written submissions from the Disputing Parties, Mexico and Canada as Parties and the petitioning institutions on the preliminary question as to whether and to what extent such institutions should intervene as amici during these arbitration proceedings. As then advised, the Tribunal was minded to decide this question on such written submissions without an oral hearing.

The procedural time-table envisaged by the Tribunal at the meeting was subsequently modified at the request of the Disputing Parties, by further order of the Tribunal communicated by letter dated 10th October 2000 as follows:

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| (1) 16 October 2000: | Further written submissions of non-state petitioners for "amicus curiae" status; |
| (2) 27 October 2000: | Methanex and US written statements re (1); |
| (3) 10 November 2000: | Mexico and Canada written submissions as Non-Disputing State Parties re Article 1128 of Chapter Eleven of NAFTA ("Participation by a Party"); and |
| (4) 22 November 2000: | Methanex and US written submissions re (3) submissions from Mexico and Canada. |

To save time, the Tribunal requested all non-Disputing Parties to send their written submissions to the Disputing Parties (as well as the Tribunal); and the Tribunal also intended that the Disputing Parties should send their relevant documentation direct to Mexico and Canada as the Non-Disputing State Parties (as well as the Tribunal).

Item 4

The Tribunal countersigned the draft Procedural Order Regarding Disclosure and Confidentiality agreed as a draft between the disputing parties dated 21 August 2000 (copy attached).

Item 5

The Respondent having by its Statement of Defense dated 10th August 2000 raised issues of admissibility and jurisdiction (see paras 113-142) and the Tribunal having heard the Disputing Parties at the meeting, the Tribunal decided upon the following procedural timetable for the Disputing Parties' respective memorials on these admissibility and jurisdiction issues:

- (1) the Respondent's First Memorial by *13 November 2000*;
- (2) the Claimant's First Memorial by *12 January 2001*;
- (3) the Respondent's Reply Memorial by *23 February 2001*; and
- (4) the Claimant's Reply Memorial by *19 March 2001*.

The Tribunal requests (but does not order) the parties to make available to the Tribunal the texts of their respective Memorials and (if appropriate other documentary materials) on floppy disk or CD Rom, using whatever software may be most convenient for the parties.

The Tribunal fixed an oral hearing on these issues for not more than three days, beginning at 0930 hours on Tuesday, 3rd April 2001, to be held at the World Bank in Washington DC. The Disputing Parties were requested to prepare their oral arguments on the general principle of equality of time, not to exceed one day each; and in due course each Disputing Party was requested to notify the Tribunal of the number of representatives or other persons likely to attend the hearing on its behalf. To allow the parties access to the hearing room to prepare for the hearing, ICSID has made arrangements to allow the Disputing Parties access on Monday, 2nd April 2000.

Item 6

The Tribunal took note of the parties' procedural agreements contained in Part A of their joint letter dated 14th August 2000 to the Tribunal, regarding the application of the IBA Rules On The Taking of Evidence In International Commercial Arbitration (1999) to the exchange of documents, witness testimony and the form of memorials and accompanying documentation

Item 7

Several miscellaneous matters were briefly addressed. In particular, the Tribunal would take further steps, in consultation with the Disputing Parties, in regard to the administration of the arbitration by ICSID, together with the question of further interim deposits payable by the Disputing Parties and the payment of Tribunal's fees, expenses & other charges.

At the end of the meeting, neither Disputing Party or Mexico wished to raise any other substantive matter; and the meeting was terminated soon after midday.



*(V.V. Veeder QC as chairman,
for the Tribunal)*